

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2168.05
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: August 31, 2004
DATE OF REPORT: September 30, 2004
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: October 22, 2004

COMPLAINT ISSUES:

Whether the Jennings County School Corporation and the Madison Area Educational Special Services violated:

511 IAC 7-27-9(a)(8) and 511 IAC 7-27-9(b) by failing to offer a student with a disability an equal opportunity to participate with nondisabled students in nonacademic activities to the maximum extent appropriate as determined by the student's individualized education program (IEP), specifically by failing to make available to a student with a disability a lunch period that offers the opportunity for participation with nondisabled students.

511 IAC 7-21-5(a)(2) by failing to provide instructional space for students with disabilities that is comparable to the general space and instructional environment of the general education students in the same building, specifically by locating two special education classrooms in the basement of the school building.

During the course of this investigation an additional issue was identified:

511 IAC 7-18-2(a) by failing to provide the student a free appropriate public education (FAPE), specifically by utilizing an isolation room not in accordance with school policy.

FINDINGS OF FACT:

1. The Student has been identified as having an emotional disability and determined eligible for special education and related services.
2. The Student participates in the School's program for students who have been identified by their case conference committees as having emotional disabilities and requiring a full-time special education placement in which behavior is tracked and privileges earned or lost (Levels Program). Students participating in this Program (Levels students) move up and down a "levels" system using C Level, B Level, and A Level. The C Level is the most restrictive, with the fewest privileges. Students at A Level receive the maximum privileges in the classroom and may also begin mainstreaming into the general education classrooms. A student's level may change from time to time, based upon his/her behavior in school.
3. The Complainant alleges that the School segregates the Levels students by assigning them to a lunch period when no other students are present in the school cafeteria. The Student's IEP does not specifically mention lunch periods. There are seven lunch periods between 10:50 a.m. and 1:05 p.m.

Assignments for lunch periods are made by classroom, not student-by-student. Levels students, other than A Level students, are assigned to a lunch period from 12:35 to 1:05 p.m. A class is not assigned to lunch periods at the same time that the class is assigned to “specials” (e.g., physical education, music, etc.) Under the master schedule for the 2004-2005 school year, the Levels Program class is assigned to “specials” at the same times as four of the seven lunch periods on Wednesdays and three of the seven lunch periods on all days. No other students are assigned to this time slot, as no other students have “specials” at the same times as the Levels students. However, the School has not explained why the Levels students cannot be assigned one of the non-conflicting lunch periods. Moreover, the Levels Program rules and procedures that are contained in a detailed, written program manual that is provided to parents during case conference committee (CCC) meetings when placement in the Levels Program is under consideration, does not explicitly state that students who earn their way into the regular classroom environment will also be included in lunch periods with other non-disabled students.

4. Levels students (other than A Level students) attend a self-contained class in a classroom that is in a lower level of the school building. It is not a basement room, as it contains doors with windows that open up to a field. The Levels Program classroom is comparable to the general education classrooms in terms of lighting, windows, equipment, and access to a restroom. The Levels Program classroom has more instructional space than other classrooms in the same school building. In addition, as explained in Finding of Fact #2, different students in the Levels Program have access to different privileges. At least seven students in the past year have transitioned out of the full-time special education classroom. At present, a few of the students check in with their special education teacher at the beginning of the day, but are mostly fully included in the general education class environment.
5. The Complainant questions the general appropriateness of using an isolation/time-out room within the Levels Program classroom. There is not a lock on the door of the isolation/time-out room. There is no dispute regarding the structure of the room, only its use. However, the Complainant has not alleged specific violations of the Levels Program procedures or other school policies. The Levels Program rules regarding the isolation/time-out room are contained in the written program manual. The Complainant agreed to the Student's placement in the Levels Program, as indicated by the Complainant's signature to the Student's IEP dated April 2, 2004, that is in effect until May 30, 2005.

CONCLUSIONS:

1. Findings of Fact #2 and #3 indicate that the School has failed to offer the Student an equal opportunity to participate with non-disabled students in nonacademic activities (specifically, lunch period) as determined by the Student's IEP. Therefore, a violation of 511 IAC 7-27-9(a)(8) is found, and a violation of 511 IAC 7-27-9(b) is found.
2. Findings of Fact #2 and #4 indicate the School provides instructional space for students in the Levels Program that is comparable to the general space and instructional environment of the general education students in the same building. Therefore, a violation of 511 IAC 7-21-5(a)(2) is not found.
3. Findings of Fact #2 and #5 indicate the availability and use of an unlocked isolation/time-out room is not a per se denial of a free appropriate public education to the Student or other students in the Levels Program. Therefore, a violation of 511 IAC 7-18-2(a) is not found.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Jennings County School Corporation and the Madison Area Educational Special Services Unit shall:

Develop a plan to change the schedule such that students in the Levels Program will participate in a lunch period with other non-disabled students unless a student's IEP states otherwise. A copy of the plan and a timeline for its implementation shall be sent to the Division no later than November 12, 2004.

Or, as an alternative, the School may revise the Levels Program manual to make clear that Levels students who reach A level (and only A level) may also begin mainstreaming/inclusion into the general education classes **and** lunch periods. The manual must be clear to parents considering placement in the Levels program that students beginning the program will be in separate lunch periods until they earn their way into other lunch periods with their non-disabled peers. A copy of the revised written manual with the appropriate changes highlighted shall be sent to the Division no later than November 12, 2004.